

**HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY**

WRIT PETITION No.12865 of 2006

Date: 28-06-2007.

Between :

M/s.S.S.Organics Limited, Hyderabad,
rep. by its Managing Director.

.....Petitioner

And

Commercial Tax Officer, Srinagar Colony Circle,
Hyderabad & others.

.....Respondents.

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ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties and perused the records which have been produced.

The main grievance of the petitioner was that the assessment of Central Sales Tax was made by the Assistant Commissioner (CT), Enforcement Wing of Hyderabad, who has no jurisdiction to make the assessment orders. This objection was met by the respondents by producing the authorization by the Joint Commissioner under Rule 59 of the A.P.Value Added Tax Rules, 2005, authorizing the Assistant Commissioner to make the assessments. Therefore, this grievance is not available to the petitioner.

Secondly, it was contended that the assessment orders were passed without any notice to the petitioner or any inquiry in the matter. The counsel for respondents has produced the record to show that the assessments were made on the basis of returns filed by the petitioner and as a matter of fact, the returns filed by the petitioner were accepted by the Department, and as such, no inquiry or notice was necessary to be given to the petitioner. This is disputed by learned counsel for petitioner, who submits that the

assessments are not made exclusively on the basis of the returns filed by him. He was entitled to certain deferments, which have not been taken into consideration. We feel that if this question is decided by this Court at this stage as to whether the assessments were made solely on the basis of returns filed by the petitioner or not, it may prejudice the parties as the question, essentially, is a question of fact and can be better addressed in an appeal. But *prima facie*, we are convinced that the assessment was made on the basis of the returns filed by the petitioner. Therefore, in our view, the order cannot be faulted on the ground that no notice was given to the petitioner before making the assessment. The petitioner would, however, be at liberty to file appeal before the appellate authority concerned and if such an appeal is filed, the appellate authority shall not be guided by any of the observations made by us in disposal of this writ petition.

The petitioner is aggrieved of the fact that in the assessment order itself, penalty had been imposed. This Court has, earlier, held in **Delta Lubricants, Vijayawada v. The Deputy Commercial Tax Officer, No.1, Suryaraopet Circle, Vijayawada**^[1], that the assessment order and penalty order cannot be a composite order. After the assessment is made, the Department can initiate proceedings for imposing penalty.

Therefore, the writ petition is allowed to the extent of imposing penalty and the order impugned is quashed to that extent. Liberty would be there to the Department to initiate proceedings for imposing penalty if so advised, in accordance with law. The original order may be returned to the petitioner on retaining the copy.

Writ petition is partly allowed accordingly.

28th June 2007

BILAL NAZKI, J

ajr

S. ANANDA REDDY, J

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